

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and ROSLYN	)	
WOODARD SMITH, Individually and as	)	
Administrators of THE ESTATE OF	)	
HARRY SMITH, III	)	
	)	
Plaintiffs,	)	Case No. 04-1254-GMS
	)	
v.	)	
	)	
CITY OF WILMINGTON, JOHN	)	
CIRITELLA, THOMAS DEMPSEY, and	)	
MATHEW KURTEN,	)	
	)	
Defendants.	)	

**APPENDIX TO  
DEFENDANTS' REPLY BRIEF IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

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Dated: July 12, 2006

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III, )  
HARRY SMITH, JR., and ROSLYN )  
WOODARD SMITH, )  
Plaintiffs, )  
v. ) Civil Action  
WILMINGTON POLICE DEPARTMENT, ) No. 04-1254  
MICHAEL SZCZERBA and ONE OR )  
MORE JOHN DOES, )  
Defendants. )  
(GMS)

Deposition of JOHN F. CIRITELLA taken  
pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:00 a.m. on  
Monday, May 8, 2006, before Kathleen White Palmer,  
Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
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JOHN A. PARKINS, JR., ESQUIRE  
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Department and Michael Szczerba

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1 eyes on him so I -- no, I didn't see a shotgun.

2 Q. Did you see a scalpel?

3 A. No, ma'am.

4 Q. Did you see any weapon?

5 A. Not in the time that I put the car in park, no.

6 Q. I want to take you back to being on the  
7 sidewalk, walking still on the sidewalk before you  
8 step out into the street on the other side of that  
9 blue car.

10 Did you see any people, any citizens on the  
11 street? On the porch? Anything like that?

12 A. No, ma'am.

13 Q. When you stepped into the street and shot into  
14 the car, did you see any people in the street on the  
15 porches? Anything?

16 A. No, ma'am.

17 Q. Was there ever a time where you became aware  
18 that there were people on the street and on the  
19 porches?

20 MR. PARKINS: Objection to the form, but  
21 you can answer.

22 A. I never saw any people. The only person that I  
23 saw was Sergeant Dempsey, Tom Dempsey, and he would  
24 have been in this area. He's the only person that I



1 saw.

2 Q. If you would be kind enough with the black pen,  
3 make a double X for where you saw Mr. Dempsey.

4 A. All right. That area right there.

5 Q. At what point did you first realize  
6 Officer Dempsey was where you placed the double X?

7 A. When the vehicle, I guess, was proceeding -- I  
8 don't even -- by me, I guess as I turned, at one point  
9 I was able to get visual contact on Sergeant Dempsey.

10 Q. Where did he come from? Do you know?

11 A. I do not know.

12 Q. Did you see any police vehicle in the vicinity  
13 of Officer Dempsey, not including your police vehicle?

14 A. No, ma'am.

15 Q. So as you're walking up the sidewalk, you saw  
16 Mr. Dempsey, as well?

17 A. No. Again, I think this is my only visual of  
18 him.

19 Q. Did you see any other police officers --

20 A. No, ma'am.

21 Q. -- as you're walking on the sidewalk?

22 A. No, ma'am.

23 Q. As you step into the street and fire, did you  
24 see any other police officers?



(STATEMENT TRANSCRIBED FROM VIDEOTAPE)

-----  
Sworn Statement of: ) Sunday  
DETECTIVE JOHN CIRITELLA ) September 14, 2003  
 ) 2:58 a.m.  
-----

Wilmington Police Department  
300 North Walnut Street  
Wilmington, Delaware 19899

APPEARANCES:

JEFFREY M. WEINER, ESQUIRE  
LAW OFFICES OF JEFFREY M. WEINER, P.A.  
1332 King Street  
Wilmington, Delaware 19801

SERGEANT WILLIAM BROWN,  
Wilmington Police Department  
Criminal Investigation Division

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1 then?

2 A. At that particular time, fearing for the safety  
3 of other people at that particular time, stealing a  
4 police car, again, a "shots fired" complaint, driving  
5 in a reckless manner of what I observed at that  
6 particular time, just fearing that if he -- I'm giving  
7 verbal commands, that he's just going to continue in a  
8 reckless manner.

9 Q. Okay. At the time of the initial part of the  
10 incident, were you aware of -- you heard a "shots  
11 fired" call come out?

12 A. That's right.

13 Q. Did you know who was doing the firing?

14 A. No, I did not.

15 Q. Okay. So you didn't know whether it was the  
16 suspect that was shooting or --

17 A. That's correct.

18 Q. -- or the officers?

19 Did you have any knowledge of what the  
20 reason was that initiated the pursuit?

21 A. I did not hear that, no. And then I knew that  
22 he had took the marked police car.

23 Q. Okay. Did you have any knowledge of what was  
24 in the police car?



IN THE UNITED STATES DISTRICT COURT  
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ESTATE OF HARRY SMITH, III, )  
HARRY SMITH, JR., and ROSLYN )  
WOODARD SMITH, )  
Plaintiffs, )  
v. ) Civil Action  
WILMINGTON POLICE DEPARTMENT, ) No. 04-1254  
MICHAEL SZCZERBA and ONE OR )  
MORE JOHN DOES, )  
Defendants. )  
(GMS)

Deposition of THOMAS CLIFTON DEMPSEY taken  
pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:00 a.m. on  
Tuesday, May 9, 2006, before Kathleen White Palmer,  
Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
Olympia, Washington 98507  
for the Plaintiffs

JOHN A. PARKINS, JR., ESQUIRE  
K. TYLER O'CONNELL, ESQUIRE  
RICHARDS, LAYTON & FINGER  
One Rodney Square - Third Floor  
Wilmington, Delaware 19899  
for the Defendants Wilmington Police  
Department and Michael Szczterba

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C6

1                   At which time I felt that due to the danger  
2 this guy just posed to John Ciritella, due to the fact  
3 that he's already obviously posed danger by stealing a  
4 police car, felony suspect, all these things coming  
5 into play, the fact that he had a shotgun in his  
6 possession, not knowing who got shot, who did the  
7 shooting at 14th and Washington, all these things  
8 coming into play, and also the fact that it appeared  
9 that he was -- if he got through that area, he would  
10 be gone, he would have a good distance on any police  
11 vehicles that would have to chase him, I proceeded to  
12 discharge my weapon to halt the situation at that  
13 point at the 500 block of Harrison.

14                  I proceeded -- he was approximately three  
15 to five feet away from me at one point. I waited,  
16 actually, a second because of a crossfire situation  
17 between myself and several officers down the block.

18                  Once he started to pass me and I had a  
19 better backdrop of buildings and nobody was in the  
20 area, I started -- proceeded to fire my handgun at the  
21 driver's side window of the vehicle shattering same.

22                  I remember, I recall while shooting and  
23 moving towards the vehicle going northbound on  
24 Harrison up the hill, firing and hitting the -- I



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1 Q. Can you, using the black pen, just put little  
2 squares or triangles where you saw other cars, other  
3 police vehicles?

4 A. I actually saw two here. I can't see any  
5 farther down the street. And that was only for a  
6 matter of a second that I observed that.

7 Q. Did you see any up Harrison Street?

8 A. No.

9 Q. Do you know how many police vehicles were  
10 involved in the pursuit?

11 A. No.

12 Q. The car you were driving, was it marked or  
13 unmarked?

14 A. Marked.

15 Q. Were you in uniform or out of uniform?

16 A. In uniform.

17 Q. What about Mr. Kurten, was he in a marked or  
18 unmarked car?

19 A. I believe it as unmarked.

20 Q. Was he in uniform or out of uniform?

21 A. I don't recall.

22 Q. Do you recall whether the lights and siren were  
23 left on your car after you exited?

24 A. Yes, they were.



IN THE UNITED STATES DISTRICT COURT  
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ESTATE OF HARRY SMITH, III, )  
HARRY SMITH, JR., and ROSLYN )  
WOODARD SMITH, )  
Plaintiffs, )  
v. ) Civil Action  
WILMINGTON POLICE DEPARTMENT, ) No. 04-1254  
MICHAEL SZCZERBA and ONE OR )  
MORE JOHN DOES, )  
Defendants. )  
(GMS)

Deposition of MATTHEW W. KURTEN taken  
pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:00 a.m. on  
Wednesday, May 10, 2006, before Kathleen White Palmer,  
Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
Olympia, Washington 98507  
for the Plaintiffs

JOHN A. PARKINS, JR., ESQUIRE  
K. TYLER O'CONNELL, ESQUIRE  
RICHARDS, LAYTON & FINGER  
One Rodney Square - Third Floor  
Wilmington, Delaware 19899  
for the Defendants Wilmington Police  
Department and Michael Szczerba

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**COPY**

C9

1 Q. Why did you think that?

2 A. Because of the actions taken by Harry Smith on  
3 that date.

4 Q. So tell me what you saw that led you to believe  
5 you needed to discharge your weapon.

6 A. At 5th and Harrison streets, I was parked right  
7 behind Detective Ciritella. He went to the northeast  
8 corner of 5th and Harrison. I was on the south side  
9 initially of the 1100 block of west 5th Street, which  
10 is just east of Harrison Street where Harry Smith  
11 initially stopped.

12 Once he proceeded to accelerate, drive up  
13 on the sidewalk towards Detective Ciritella, I moved  
14 around towards the intersection of 5th and Harrison  
15 Street and I observed that he was going straight  
16 towards Detective Ciritella.

17 Q. You then did what after you made that  
18 observation?

19 A. Detective Ciritella had fired on the subject  
20 fearing for his life and I also fired fearing for not  
21 only Detective Ciritella's life, but also the life of  
22 anyone else that was at the scene or could encounter  
23 this individual at some point in time thereafter if he  
24 should escape.



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1 armed with a shotgun? Did anybody tell you that?

2 A. Did anybody tell me that?

3 Q. Yes.

4 A. No, nobody told me that.

5 Q. Can you define for me or tell me what it means  
6 if someone says they had a clear backdrop?

7 A. Clear backdrop in my definition would be you  
8 have your gun out, you have your line of sight on its  
9 intended target, you want to make sure that the  
10 surrounding background is clear. You want to make  
11 sure that there's no other pedestrians, innocent  
12 victims, anything else that could be injured, harmed,  
13 damaged to a certain extent. Certainly you want to  
14 make sure that you have your intended target and only  
15 that target in the range of fire should you have to do  
16 so.

17 Q. When you were discharging your weapon, did you  
18 have a clear backdrop?

19 A. Yes, or else I would not have fired.

20 Q. You didn't see any people on the street in the  
21 500 block of Harrison Street during any of the time  
22 that you were firing your weapon?

23 A. No. Certainly in the areas, immediate areas  
24 where we were looking and we were -- action was taking



(STATEMENT TRANSCRIBED FROM VIDEOTAPE)

-----  
Sworn Statement of: ) Sunday  
CORPORAL MATTHEW KURTEN ) September 14, 2003  
 ) 3:23 a.m.  
-----

Wilmington Police Department  
300 North Walnut Street  
Wilmington, Delaware 19899

APPEARANCES:

JEFFREY M. WEINER, ESQUIRE  
LAW OFFICES OF JEFFREY M. WEINER, P.A.  
1332 King Street  
Wilmington, Delaware 19801

SERGEANT WILLIAM BROWN,  
Wilmington Police Department  
Criminal Investigation Division

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**ORIGINAL**

C12

1           westbound. It eventually took the northbound path in  
2           the 500 block of Harrison Street.

3                         Concerned for the well-being of not only  
4           other officers and victims, any innocent citizens out  
5           there, a few more shots were fired. I don't know  
6           specific numbers at that time. I remained on pretty  
7           much the rear driver's side quarter panel of the  
8           vehicle. That was my position at that point in time.

9                         I know that district cars, patrol officers,  
10          they are required to take out a shotgun on every shift  
11          and that was likely to be inside the vehicle. There's  
12          a mount inside the passenger compartment where the  
13          shotgun is kept. I knew that if the suspect had  
14          gotten a hold of that gun, with his prior demeanor,  
15          including the chase and his acts towards Detective  
16          Cirittella, there could be further bodily harm  
17          threatened and/or committed.

18                         And the car eventually stopped in the  
19          middle of the block.

20          Q.        Okay. Talk about when you -- who shot first?

21          A.        Detective Cirittella.

22          Q.        Okay. The suspect was driving at him?

23          A.        Yes, sir.

24          Q.        Okay. And you observed him being in front of



1           the vehicle and retreating and moving off to the side?

2       A.     Yes, sir.

3       Q.     Trying to get out of his way, also?

4       A.     Yes, sir.

5       Q.     And you fired at the vehicle at around the same  
6       time fearing that he wouldn't be able to get out of  
7       the way and you were trying to stop him from running  
8       over Officer Ciritella?

9       A.     That's correct.

10      Q.     Okay. And so you fired a number of rounds at  
11      that point. Any idea how many?

12      A.     I would say maybe two, three.

13      Q.     Okay. And then you reassessed it and stepped  
14      back. And he struck the parked vehicle?

15      A.     Yes.

16      Q.     Okay. And at that point you didn't know where  
17      he was going to go because he was in motion, it was  
18      turning as it was driving the jeep around?

19      A.     He showed no, I guess, desire to stop. He  
20      wasn't going to stop.

21      Q.     Still accelerating?

22      A.     He was going to try to go somewhere.

23      Q.     Okay. And there were officers in the area.  
24      You could see that there was at least one officer to



1 your left --

2 A. Mm-hmm.

3 Q. -- possibly in that vehicle's path again?

4 A. Mm-hmm, that is correct.

5 Q. Okay. And that's when you fired your second --

6 A. Yes.

7 Q. -- round or rounds?

8 A. Yes.

9 Q. Okay. Did the vehicle stop at that point?

10 A. The vehicle -- no. Proceeded slowly northbound  
11 in the 500 block of Harrison Street.

12 Q. Okay. And at that point, once it was  
13 travelling in a northbound direction, you fired at him  
14 again fearing --

15 A. Yes.

16 Q. -- that the suspect would escape and would be  
17 armed at that point --

18 A. Yes.

19 Q. -- at least with a shotgun that was in the car?

20 A. Already armed with the car itself.

21 Q. Okay. Originally when the initial radio  
22 broadcast came out, did you hear the reports of shots  
23 fired?

24 A. Yes, I did.



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1 Q. Did you know who had fired what?

2 A. I did not. I did not know any of the  
3 circumstances.

4 Q. But you knew shots had been fired?

5 A. That's correct.

6 Q. Okay. So in your mind, the suspect could have  
7 possibly already been armed?

8 A. Yes, sir.

9 Q. Okay. At the point where you and Detective  
10 Ciritella arrived at 5th and Harrison streets, how did  
11 you position your vehicles, the two of you?

12 A. Detective Ciritella was parked in front of me  
13 facing northbound, facing the corner that the -- the  
14 northeast corner. And I was directly behind him  
15 facing --

16 Q. Were the cars parked in a manner as to block  
17 the intersection?

18 A. Yes, yes. There was no other avenue of escape  
19 than what he tried to take.

20 Q. Okay. So at that point your intention was to  
21 try to contain the situation, and at that point you  
22 observed Detective Ciritella out of the car and you  
23 were out of your car, as well?

24 A. Yes.



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN )  
WOODARD SMITH, individually and )  
as Administrators of the ESTATE )  
OF HARRY SMITH, III, )  
Plaintiffs, )  
v. ) Civil Action  
CITY OF WILMINGTON, JOHN ) No. 04-1254-GMS  
CIRITELLA, THOMAS DEMPSEY and )  
MATTHEW KURTEN, )  
Defendants. )

Deposition of JOHNNY WHITEHEAD taken  
pursuant to notice at the United States District  
Court, District of Delaware, Conference Room 2204, 844  
North King Street, Wilmington, Delaware, beginning at  
8:35 a.m., on Tuesday, June 6, 2006, before Kurt A.  
Fetzer, Registered Diplomate Reporter and Notary  
Public.

APPEARANCES:

KESTER I.H. CROSSE, ESQ.  
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1 (A brief recess was taken.)

2 BY MS. SULTON:

3 Q. Now, so you hear this call over the radio and  
4 you say you were dispatched. Did they specifically  
5 ask for you and your partner, your car to go and check  
6 it out or was it kind of a general call to everybody  
7 working keep your eye out?

8 A. I don't recall. I believe it may have been,  
9 because that's our district I believe we were  
10 dispatched.

11 Q. So you were told what as you remember it?

12 A. That a tall, light-skinned, black male had ran  
13 away from the hospital.

14 Q. And then you were on the lookout for that  
15 person?

16 A. Yes.

17 Q. And you eventually saw that person, correct?

18 A. No.

19 Q. How was your attention drawn to Harry Smith,  
20 III?

21 A. Well, I was responding to the hospital to go to  
22 the bathroom and, again, I saw him running southbound  
23 on the west side of the street with a band and a  
24 hospital gown. And then I thought that, I said man,



1 you know, this must be an epidemic. Clearly he wasn't  
2 the guy we were looking for. His physical stature did  
3 not match the guy we were initially looking for, so...

4 Q. And how did he appear to you when you saw him?

5 A. When I first saw him, he was just running  
6 southbound. So I didn't see his facial expression. I  
7 just know it was a dark-skinned, heavyset, black male  
8 running southbound.

9 Q. And it was your understanding what you were  
10 looking for was a perhaps taller, light-skinned male  
11 but someone who had eloped from the hospital?

12 A. Yes.

13 Q. And was it your understanding the person ran  
14 away from the hospital because they were experiencing  
15 some mental health problems?

16 A. That could have very well be. I don't actually  
17 recall the state of mind of the escapee.

18 Q. But it wasn't your impression that someone was  
19 running away from cancer surgery or --

20 A. Well, I don't think he was running from  
21 surgery, but I mean people do that if they're waiting  
22 too long or they're not comfortable with their  
23 treatment from the hospital, they'll flee so it's not  
24 uncommon.

1 Q. And you have to have a key to unlock it,  
2 correct?

3 A. You can unlock it with a key. You can also  
4 unlock it with a button.

5 Q. You can unlock it with a button. Where is the  
6 button?

7 A. It's on the console, center console.

8 Q. Before you started operating that vehicle, did  
9 you know where the button was on the center console?

10 A. Yes.

11 Q. Would I as a person off the street never having  
12 driven a patrol car know where the button is on the  
13 center console to unlock the shotgun?

14 A. Probably not if you're not used to the police  
15 vehicles.

16 Q. But in this particular vehicle did it have a  
17 lock with a key?

18 A. It had a lock. I'm not sure if we had a key or  
19 not for that lock, but you can unlock it with a key  
20 and you can unlock it with the button.

21 Q. So if you have a key is it the same key that  
22 you use for the ignition of the car?

23 A. No.

24 Q. It's a separate key?

1 Smith?

2 A. I don't think that was my partner. I believe  
3 that was Sergeant Donohue.

4 Q. So Sergeant Donohue got on the radio and said  
5 what based on your understanding?

6 A. I believe it was shots fired.

7 Q. And how did she know shots were fired?

8 A. She was responding, she was in the block when I  
9 fired my shot.

10 Q. So she saw you shoot Harry?

11 A. I don't know what she saw. I know that she was  
12 in the block. She was close enough to see. Whether  
13 or not she saw it or not, I don't know.

14 Q. So at no point did you or your partner say that  
15 Harry was shooting at you, correct?

16 A. I did not say he was shooting at me, no.

17 Q. And your partner didn't say that either,  
18 correct?

19 A. I'm not sure what he said. I know I didn't say  
20 that.

21 Q. Have you talked with him?

22 A. I spoke with him.

23 Q. About the incident?

24 A. Yes.